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10/081,483	02/22/2002	Robert Farr	F3284(C)	1491

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UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



**DETAILED ACTION**

1. The Amendment filed August 18, 2004 has been entered. Claim 2 <sup>has</sup> ~~has~~ been cancelled. Claims 1,3-19 remain pending with claim 19 being withdrawn from further consideration as a non-elected invention. pl  
11/1/05
2. The terminal disclaimer filed August 18, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Application No. 10/081,575 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Election/Restrictions***

3. Applicant's election with traverse of claims 1-18 in the Office Action mailed March 3, 2004 is acknowledged. The traversal is on the ground(s) that it would not be a burden on the examiner to search both inventions. This is not found persuasive because there are features that are not common to both inventions and would burden the examiner to expand the search, such as the container of claims 1-18 would not have to be sealed as recited in claim 19 and the valve of claim 19 would not require being biased to a sealed position. The requirement is still deemed proper and is therefore made FINAL.

***Claim Objections***

4. Claims 5 and 6 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

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Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1 recites the beverage is held under a headspace pressure of 2.5 atm at 5-15°C.

5. Regarding claims 5 and 6, claim 5 recites the sparingly soluble gas in the headspace of the container has a partial pressure of not exceeding 1 atm at 18°C, which is a temperature outside the recited range of the independent claim. Claim 6 depends from claim 5.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1,3,7,8,15,16 are rejected under 35 U.S.C. 102(b) as being anticipated by Frutin (WO 98366710).
8. Frutin teaches a frothed beverage that include a sparingly soluble effervescence inducing gas, such as nitrogen or nitrous oxide providing a head space that occupies 10-80% of the container at a pressure of at least 2.5 (e.g. 55 psi up to 120 psi) at 5°C , that is held in a container with an aerosol valve that is biased closed, which would prevent opening when inverted. The pressure in the head space above the liquid in the container is sufficient to cause the beverage to be discharged into the mouth of the consumer, since 55 psi is capable of forcing the product to be discharged ( Page 1, lines 1-10, Page 2, line 36 to Page 4, line7, Page 4, lines 19-26,Page 5, line 1to Page 6, line 15, Page 8, lines 13-26, Page 12, lines 22-34, Page 18-20).

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
10. Claims 1,4,9, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (US 574079).
11. Regarding claims 1,4, 9, Hoffman teaches an oxygenated beverage, which is effervescent (i.e. oxygen saturated similar to carbon dioxide saturated beer and

sparkling wine ), wherein the beverage is tea, coffee, root beer, or water, held in a container at 2-6 atmospheres, can reduce or control halitosis, and may be taken via ingestion or spraying, which would involve a valve structure (Column 2, lines 20-65, Column 3, line 10 to Column 4, line 67) . Although Hoffman is silent in teaching the particular temperature in combination with the 2-6 atmospheres pressure, Hoffman teaches the amount of oxygen dissolved at a given pressure depends on the particular temperature of the container and the amount of oxygen dissolved affects the ability of the beverage to control or eliminate halitosis , as well as the stored beverage's own susceptibility to microbial growth (Column 2, line 45 to column 3, line 7, Table 1). Therefore, it would have been obvious to select any particular storage temperature between 5-15°C, depending on (1) the type of beverage (e.g. root beer, which is normally chilled), (2) the desired level of oxygenation and effectiveness at controlling halitosis as compared to the amount of microbial risk.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (US 574079) as applied to claims 1,4,9 above, further in view of Denton et al. (US 5971357).

13. Hoffman is silent in teaching the container has an actuator to opens the valve that is shaped and positioned for engagement in a user's mouth or teeth for dispensing. Denton et al. teach it is advantageous to provide an actuator to opens the valve that is shaped and positioned for engagement in a user's mouth or teeth for dispensing when a person is required to keeps both hands free to do something else. Denton et al. teach

such an actuator/valve combination that is easy to use, inexpensive, does not leak , and can be used in combination with a variety of pressurized containers(Column 1, lines 10-43, Column 2, lines 10-41, column 4, lines 41-59, Column 6, lines 29-41, Column 7, lines 5-27). Therefore it would have been obvious to include an actuator to opens the valve that is shaped and positioned for engagement in a user's mouth or teeth for dispensing since Denton et al. teach an bite actuator/valve combination that is easy to use, inexpensive, does not leak , can be used in combination with a variety of pressurized containers , and allows a person to keeps both hands free to do something else while consuming a beverage.

14. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (US 574079) in view of Denton et al. (US 5971357), as applied to claim 10 above, further in view of Bergman (SE9801752 A).

15. Modified Hoffman is silent in teaching a button on the bite valve to consume the beverage, which may be tea, coffee, water, or root beer.

16. Bergman teaches a water dispensing valve operated by biting, but additionally utilizes a button to control the amount dispensed based on the bite pressure applied to the button (English Abstract). Therefore, it would have been obvious to modify Hoffman and include a button on the bite-valve, since Bergman teaches this provides a means for controlling the dispensing amount by bite pressure and one would have been substituting one conventional bite-valve for another for the same purpose: dispensing water.

17. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frutin (WO 98366710) as applied to claims 1,3,7,8,15,16, further in view of Kohler et al. (US 5143288)

18. Frutin teaches an aerosol valve and teaches features may be provided to urge remaining beverage in the container, which may have become effervescent, out of the container (Page 4, lines 19-26), but is silent in teaching a dip tube that urges the effervescent fluid out of the container, as recited in claim 12, with holes that communicate with the headspace as recited in claim 13.

19. Kohler et al. also teach aerosol valves for a container comprising a liquid and nitrogen system at similar pressures (e.g. up to 120 psi), and teach that one can maintain a constant pressure to urge the material out of the container, even as the level reaches the bottom of the container, by providing a dip tube with a hole in communication with the headspace of the container. Kohler et al. teach the desired discharge pressure is maintained by allowing gas residing in the headspace to mix with the liquid as it travels up the dip tube, and that the actual location depends on the desired discharge consistency (Column 1, line 49-67, Column 3, lines 5-55, Column 5, line 50 to Column 6, line 35 ). Therefore, it would have been obvious to include a hole in communication with the headspace of the container of Frutin since Frutin teaches providing features to urge a remaining nitrogen effervesced beverage out of the container using an aerosol valve, and Kohler et al. providing an aerosol valve with a dip tube with a hole in communication with the headspace of a container will assure that



one could urge all of the liquid out of the container and a more consistent amount of gas, such as nitrogen, is mixed with liquid.

20. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frutin (WO 98366710) in view of Kohler et al. (US 5143288) as applied to claims 12 and 13 above, further in view of Berg Jr. et al. (US 3947567).

21. Frutin teaches the amount of gas discharged with the liquid when the effervesced liquid is expelled depends on the size of the headspace and the pressure of the gas in the headspace (Page 20, lines 17-19). However, Frutin is silent in teaching any particular amount of gas discharged with the liquid.

22. Berg et al. also teach compositions for forming effervescent liquids. In explaining the particular desired degree of effervescence for products of Berg et al., Berg et al. teach the conventional effervescent beverage is 1 volume of gas per volume of liquid. (Column 4, line 39 to Column 5, line 16, Column 5, lines 62-66, Column 6, lines 5-53, and Column 6, line 62 to Column 7, line 4). Therefore, it would have been obvious to further modify Frutin such that the volume ratio of gas to liquid is at least 0.5 to 1 when the beverage is expelled since Frutin teaches one may adjust the head space and pressure to provide a desired gas to liquid ratio for the expelled beverage and Berg teaches the conventional effervescent beverage has a gas to liquid volume ratio is 1:1.

23. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frutin (WO 98366710) as applied to claims 1,3,7,8, 15,16, further in view of (Frutin WO 97/21605)

24. Frutin '710 teaches the container may be fitted with a device which injects flavor into the container (Page 13, line 33 to Page 14, line 5), such as a modified version of Frutin '605 (Page 6, lines 6-15), and Frutin '605 teaches including a container a supplemental compartment with a sparingly soluble effervescence inducing gas and a liquid that releases the contents upon opening the container, or relieving the pressure within the container (Page 4, lines 16-23, Page 14, lines 23-36, and the embodiments of 16-18). Therefore, it would have been obvious to modify Frutin '710 and include a widget for releasing the gas and a flavor when the valve is opened, since Frutin '710 teaches this may be done using a modified container of Frutin '605, and Frutin '605 teaches widgets for a container to supply a sparingly soluble effervescence inducing gas and a flavor liquid upon releasing the pressure within the container.

### ***Response to Arguments***

25. Applicant's arguments with respect to the rejection made under 35 USC 102(b) and 35 USC 103(a) have been fully considered. None of the primary references applied teach the newly recited temperature and pressure limitation of claim 1. Therefore, the rejections made under 35 USC 102(b) and 35 USC 103(a) in the Office Action mailed March 3, 2004 have been withdrawn. However, upon further consideration of the amendment, new grounds of rejection were made as set forth above.

***Conclusion***

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
27. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.
28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.
29. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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30. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 1761



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